



# California Fair Political Practices Commission

December 26, 1989

Cary Davidson  
Reed and Davidson  
888 West Sixth Street, 12th Floor  
Los Angeles, CA 90017

Re: Your Request for Informal Assistance  
Our File No. I-89-612

Dear Mr. Davidson:

This is in response to your letter requesting assistance regarding the enforcement provisions of the Political Reform Act (the "Act").<sup>1/</sup> You have specifically requested informal assistance with respect to your question, consequently, we are providing only these general guidelines.<sup>2/</sup>

## QUESTION

Who is the civil prosecutor with the responsibility of enforcing the civil penalties of the Act with respect to violations occurring in connection with a statewide ballot measure?

## CONCLUSION

Where a violation involves a statewide ballot measure, the Commission is the civil prosecutor. The district attorney is civil prosecutor with respect to violations of the Act which occur in connection with local elections. However, the Commission may initiate an action against local elected officials if the Commission obtains written authorization from the district attorney.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

DISCUSSION

Section 91001(b) provides:

(b) The civil prosecutor is primarily responsible for enforcement of the civil penalties and remedies of this title. The civil prosecutor is the commission with respect to the state or any state agency, except itself. The Attorney General is the civil prosecutor with respect to the commission. The district attorneys are the civil prosecutors with respect to any other agency. The civil prosecutor may bring any civil action under this title which could be brought by a voter or resident of the jurisdiction. Upon written authorization from a district attorney, the commission may bring any civil action under this title which could be brought by a voter or resident of the jurisdiction. Under such circumstances, Section 91007 shall not apply to the commission.

(Emphasis added.)

This section has been interpreted to establish the district attorney as civil prosecutor for violations of the Act which occur in connection with county elections. (Jackson Advice Letter, No. A-76-493, copy enclosed.)<sup>3/</sup> Thus, with respect to a local school board, we advised that the district attorney has primary civil enforcement authority over the action. (Alderman Advice Letter, No. 76-347, copy enclosed.) Where a violation involves a statewide ballot measure, the Commission is the civil prosecutor.<sup>4/</sup>

Section 91007(a) provides:

(a) Any person, before filing a civil action pursuant to Sections 91004 and 91005, must first file with the civil prosecutor a written request for the civil prosecutor to commence the action. The request shall include a statement of the grounds for believing a cause of action exists. The civil prosecutor shall respond within forty

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<sup>3/</sup> The Commission may pursue local violations with written consent from the district attorney.

<sup>4/</sup> This division of authority is also evidenced by the filing requirements with respect to statewide ballot measure committees and city ballot measure committees. Statewide ballot measure committees file the originals of their campaign statements with the Secretary of State. City ballot measure committees file the originals of their campaign statements with their city clerk. (Section 84215.)

days after receipt of the request, indicating whether he intends to file a civil action. If the civil prosecutor indicates in the affirmative, and files suit within forty days thereafter, no other action may be brought unless the action brought by the civil prosecutor is dismissed without prejudice as provided for in Section 91008.

Since the Commission is the civil prosecutor with respect to statewide ballot measures, all the filings in compliance with the requirements of Section 91007 should be directed to the Commission. The Commission is required to respond within forty days after receipt of the request to indicate whether the Commission intends to file a civil action. Because this is a mandatory requirement and because the plaintiff is precluded from taking any legal action during this forty day period, the statute of limitations period is suspended temporarily during the Commissions review.<sup>5/</sup> (Community Cause v. Boatwright (1981) 124 Cal. App. 3d 888, 903.)

In addition, please be aware that even where the Commission is not the civil prosecutor, any person filing a complaint, cross-complaint or other initial pleading in a civil action pursuant to Section 91004 must serve on the Commission a copy of the pleading within 10 days of filing the pleading. A notice containing the full title and number of the case, the court in which the case is pending, the name and address of the attorney for the person filing the complaint, cross-complaint, or other initial pleading and a statement that the case raises issues under the Political Reform Act may be substituted for a copy of the pleading. (Section 91007(b).)

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<sup>5/</sup> Section 91011 provides:

(a) No civil action alleging a violation in connection with a report or statement required by Chapter 4 (commencing with Section 84100) of this title shall be filed more than four years after an audit could begin as set forth in subdivision (b) of Section 90002.

(b) No civil action alleging a violation of any provisions of this title, other than those described in subdivision (a), shall be filed more than four years after the date the violation occurred.

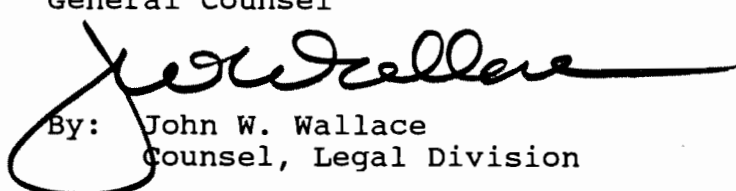
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I hope this general information will be of assistance. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

KED:JWW:plh

Enclosures

DANA W. REED  
CARY DAVIDSON  
DARRYL R. WOLD  
OF COUNSEL

FPDC  
Oct 23 2:12 PM '89  
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October 20, 1989

Kathryn Donovan, General Counsel  
Fair Political Practices Commission  
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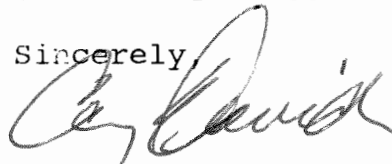
Dear Ms. Donovan:

This letter requests informal assistance from the Fair Political Practices Commission ("FPPC") under Government Code §83114(b). (All references in this letter to code sections are to sections of the Government Code contained in the Political Reform Act, referred to herein as the "Act.")

We request written confirmation of advice this firm received from Janis McLean on July 24, 1989. Ms. McLean advised us that the construction given by the FPPC to §91001(b) is that the FPPC is the civil prosecutor that would have responsibility for enforcement of the civil penalties and remedies of the Act against a person who violates the Act by failing to report contributions in support of a statewide ballot measure. She also advised that as a result, a person who wishes to file a civil action under §91004 for such a violation is required by §91007(a) to first file a request with the FPPC that the FPPC commence the action, as the civil prosecutor.

If you have any questions, please feel free to contact us.

Sincerely,



Cary Davidson

CD:lb



# California Fair Political Practices Commission

October 26, 1989

Cary Davidson  
Reed & Davidson  
888 West Sixth Street, 12th Floor  
Los Angeles, CA 90017

Re: Letter No. 89-612

Dear Mr. Davidson:

Your letter requesting advice under the Political Reform Act was received on October 23, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan  
General Counsel

KED:plh